

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 301 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JAYANTIJI GHEMARJI THAKORE

Versus

OIL & NATURAL GAS CORPORATION

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Appearance:

MR YN RAVANI for Petitioner

MR RAJNI H MEHTA for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/11/1999

ORAL JUDGEMENT

#. The present appellant is the original plaintiff, has filed the present appeal from order under Order 43 Rule 1 of Civil Procedure Code against the order passed by the learned Civil Judge (SD), at Mehsana below Exh.1 in Civil Misc. Application No : 87 of 1997.

#. The present appellant is the original plaintiff who met with an accident and as result, sustained severe

injuries on various part of his body and consequently, the appellant sustained permanent disability. The appellant has filed the suit for damages for recovering Rs.3 lacs from the original defendant. But as the present appellant has no means to pay the requisite court fees and therefore, he has filed the Civil Misc. Application No : 87 of 1997 and requested the Court to permit him to file the suit as indigent person. He has also annexed the schedule along with the said CMA and as also the statement was recorded on first instance as required under Order 33. Consequent to which, a notice was issued to the defendant and the State of Gujarat also. Thereafter, the applicant has examined himself before the Court below Exh.30 on 10-7-98 and he has also been cross examined by the learned Government Pleader on 28-7-98. After hearing the learned advocates appearing for the respective parties, the Court below has rejected the above CMA of the present appellant and therefore, the present appellant has filed the appeal from order.

#. I have heard the learned counsel for the petitioner Shri Yogesh Ravani and Mr.K.C. Shah, learned AGP for respondent No.3 - State of Gujarat and Mr. Ajay Mehta, learned counsel appearing for the respondents No.1 to 2. The learned counsel appearing for the appellant has taken this court through the order passed by the court below. On bare perusal of the order passed by the court below, it clearly reflects from the order itself that in cross examination, it has come out that the present appellant original plaintiff was working in factory as labourer. As per this own admission in cross examination, he was earning Rs.60/- per day and he was also earning Rs.40/per day by some other source of income. Only relying upon the same, the Court below has rejected the above civil misc. application. I have gone through the order in detail and in my opinion, nothing has been come out from the above evidence of the appellant to declare which leads the court below to reject the CMA of the present appellant for not declaring him as the indigent person. It is pertinent to note that on scrutiny of the above evidence, it is not established that he is getting work daily and it is also not established from the above evidence that from what other modes, he is also earning Rs.40/- per day. Whereas, the appellant has annexed schedule with the CMA and an affidavit to that effect was also filed. What is required to be seen at the time while deciding the CMA to declare the person as indigent person is whether, he has sufficient means to pay the court fees or not ? It has been established from the record that the present appellant has filed the appropriate affidavit and also submitted the schedule

regarding his property and nothing has been established from the same and that is also not the case with the appellant that he had disposed of the property just to avoid the payment of required court fees. When there is absence of any cogent evidence regarding the income of the appellant, it is not proper on the part of the court below to directly jump to the conclusion that he is having sufficient means to pay the court fees stamp and therefore, the finding given by the court below is not just and proper and the same is required to be quashed and set aside.

#. The relevant provisions of Order 33 are intended to enable the indigent person to institute and prosecute the suit without payment of any court fees. Generally, the plaintiff suing in the Court of law is bound to pay the court fees prescribed under the Court Fees Act at the time of presentation of the plaint. But the person not having sufficient means to pay the requisite court fees, can be exempted from paying the court fees at the first instance. In the present case, the present appellant has met with an accident and sustained various severe injuries on various parts of the body which resulted into permanent disability and looking to his nature of work and the fact that in absence of any cogent evidence regarding his income, the present appellant is required to be permitted to be declared as indigent person. In view of my above discussion, the order passed by the court below is quashed and set aside. The present appellant - original plaintiff is permitted to sue as the indigent person and the court below is directed to register the suit filed by the plaintiff accordingly. Appeal stands allowed accordingly.

24-11-1999 [ R. P. Dholakia, J. ]

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